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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,135	10/31/2003	William T. Flynn	65857-0117	2828

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EXAMINER

DEVORE, PETER T

ART UNIT PAPER NUMBER

3751

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/698,135

Applicant(s)

FLYNN, WILLIAM T.

Examiner

Peter T. deVore

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 8-20, 22-33, and 34-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Griffith.

The Griffith reference discloses a valve assembly comprising a body 11 with inlet 14, outlet 15, shaped cavity 13, and recesses 16, a valve head 17, an elongated portion/stem 20, a guide (22/23) including an opening and front and rear centering formations (front and rear portions of element 26) with connection elements 27, and a biasing mechanism/spring 21, but does not disclose that the valve head is modified ellipsoid shaped. However, it would have been obvious to modify the valve head to be modified ellipsoid shaped, since it has been held that the shape of an element is a matter of obvious design choice absent persuasive evidence that the particular configuration is significant. See *In re Dailey*, 149 USPQ 47. Regarding claim 30, the Griffith reference discloses a valve as discussed supra, but remains silent as to the material of the head and shaped cavity. However, it would have been obvious to make the head and shaped cavity from metal, since it has been held to be within the general

skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In *Re Leshin*, 125 USPQ 416.

Regarding claims 35-42, the claimed methods are inherently performed during the normal use of the modified Griffith device.

Claims 1-3, 5-11, 13-17, 26, 31, 32, 34-38, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klose.

The Klose reference discloses a valve assembly comprising a body (20 and 22) with inlet 21, outlet 33, recess (recess which guide 30 is fitted in), and shaped cavity 25, a valve head 28, an elongated portion/stem 27, a guide 30 including an opening, front centering formation (portion of guide 60 proximate inlet 21), a rear centering formation (portion of guide proximate outlet 33), and a biasing mechanism/spring 31, but does not disclose that the valve head is modified ellipsoid shaped. However, it would have been obvious to modify the valve head to be modified ellipsoid shaped, since it has been held that the shape of an element is a matter of obvious design choice absent persuasive evidence that the particular configuration is significant. See *In re Dailey*, 149 USPQ 47. Regarding claims 35-38 and 42, the claimed methods are inherently performed during the normal use of the modified Klose device.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Griffith in view of Medina.

The Griffith reference discloses a valve as discussed supra, but does not disclose the use of only three legs spaced 120 degrees apart. However, the Medina

reference discloses a similar valve with only three legs 48 spaced 120 degrees for reduced complexity as compared to four legs. It would have been obvious to employ only three legs spaced 120 degrees on the Griffith valve in view of Medina for reduced complexity as compared to four legs.

Response to Arguments

Applicant's arguments filed 6/24/05 have been fully considered but they are moot not persuasive. Applicant first argues that the Griffith and Klose references do not disclose a modified ellipsoid shaped valve head. However, this argument is moot as this element is now rejected via obviousness in each case. Applicant next argues that the Griffith and Klose references do not disclose radially disposed front and rear centering formations. However, it is the Examiner's position that the Griffith and Klose references indeed disclose "radially disposed front and rear centering formations" as discussed in more detail in the rejections supra.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter T. deVore whose telephone number is (571) 272-4884. The examiner can normally be reached on Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3751

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pd *Pd*

Justine L
JUSTINE R. YU
SUPERVISORY PATENT EXAMINER
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9/1/05